

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 ) CC Docket No. 94-129  
 )  
Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )

COMMENTS

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## **SUMMARY**

BellSouth believes that it should be possible for the Commission to establish one set of rules to govern the selection and change of a customer's designated carrier. However, BellSouth urges the Commission, in considering the appropriate rules to prescribe for slamming, to carefully consider the impact that local exchange competition, especially through resale of an ILEC's local exchange service and the availability of an ILEC's OSS, will bring to the table.

In most situations the relationships of ILECs, IXC's, local toll carriers and facilities-based CLECs are fairly straightforward. However, the relationships, rights and responsibilities become much more complicated where the local exchange provider is a CLEC which is reselling an ILEC's local exchange service. The Commission's rules must clarify in these instances whether it is the reseller CLEC or the reseller CLEC's end user which has the authority to designate and change the preferred interexchange and local toll carriers and to request implementation and discontinuance of a freeze of a preferred interexchange and/or local toll preferred carrier designation.

The Commission should consider the proper rights and responsibilities in the case of changes in preferred local exchange carriers, particularly when PC changes are made from an ILEC to a reseller CLEC or from one reseller CLEC to another reseller CLEC. Through BST's OSS systems, the reseller CLEC can accomplish the change of service through the OSS system simply by indicating through the system that it is the authorized preferred local exchange carrier.

The potential for slamming of the end user from one LEC to another is tremendous in this situation.

BellSouth agrees with the Commission's tentative conclusion that only the submitting carrier should be required to follow verification procedures. It is the submitting carrier which has the relationship with the subscriber. Requiring executing carriers to also follow these procedures would be unnecessarily burdensome and confusing for the subscriber and the executing carrier. Moreover, the executing carrier should have no responsibility for assuring that the submitting carrier followed the appropriate verification procedures.

BellSouth opposes any suggestions that more stringent requirements be placed upon ILECs than other carriers. For instance, BellSouth believes that letters to former customers should be permissible as long as the Commission's rules are not violated. Similarly BellSouth sees no reason for the Commission to require ILECs which serve as both submitting and executing carriers to be limited to verification by a third-party due to the possibility that ILECs purportedly have "an enhanced ability or incentive to make unauthorized PC changes on their own behalf." BellSouth has no preferred status or ability to make such changes.

BellSouth opposes the Commission's tentative conclusion that verification of in-bound calls be required. Verification requirements for consumer-initiated calls will unnecessarily subject carriers to increased costs and will subject customers to unwarranted frustration, inconvenience and delay in selecting their provider of choice. If the Commission deems it necessary to require in-bound verification, however, it should expand verification options to include the use of audio recording equipment.

Slammed subscribers should not be relieved of all charges during the period of slamming. The risk is too great that such an approach would lead to a serious consumer fraud problem in which customers would intentionally avoid reporting being slammed for an extended period of time in order to have all their charges written off. In addition, the offending carrier should be required to pay to the authorized carrier its costs incurred in collecting an amount equal to all charges paid by the subscriber. The Commission should clarify, however, that it in no way intends to impose liability on any carrier solely because it has collected amounts from the subscriber as a billing and collection agent.

In order for the slamming occurrence not to provide the authorized carrier with a windfall, an authorized carrier which collects charges from the offending carrier should be required to pay the slammed subscriber any excess in what the subscriber paid to the offending carrier over what the authorized carrier's charges would have been. BellSouth also agrees with the Commission that the offending carrier should be liable to the authorized carrier for the value of any products or services that the subscriber may have lost due to the slamming incident. The authorized carrier should then be required to restore these products and services to the subscriber.

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**COMMENTS**

BellSouth Corporation for itself and its affiliates ("BellSouth"), including BellSouth Telecommunications, Inc. ("BST"), hereby submits its comments in the above-captioned rulemaking proceeding.<sup>1</sup>

In this proceeding, the Commission is examining what changes should be made to its existing rules which govern the selection and change of a customer's designated primary interexchange carrier<sup>2</sup> in light of Section 258 of the Telecommunications Act of 1996.<sup>3</sup> The existing rules were promulgated at a time prior to the 1996 Act when the Commission had authority to regulate such changes and to enforce its rules as to "slamming"<sup>4</sup> which occurred with

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<sup>1</sup> Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Further Notice of Proposed Rulemaking (released July 15, 1997) ("Notice").

<sup>2</sup> 47 C.F.R. Sections 64.1100 and 64.1150.

<sup>3</sup> 47 U.S.C. Section 258. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").

<sup>4</sup> "Slamming" is the practice of changing a subscriber's designated primary carrier without the subscriber's authorization.

respect to interstate interexchange services. Section 258 now provides the Commission with the broad authority over slamming for all local exchange and telephone toll service, both interstate and intrastate. The Commission seeks comments on the details required to flesh out the provisions of Section 258 within two broad categories: 1) what acts are prohibited and by whom; and 2) what liability do carriers have to one another and to the affected end user subscriber.

In the comments which follow, BellSouth addresses various aspects of the matters raised by the Commission. In particular, BellSouth urges the Commission, in considering the appropriate rules to prescribe under Section 258, to consider the impact which local exchange competition, especially through resale of an ILEC's local exchange service, as well as the availability of the ILEC's Operations Support Systems ("OSS"), bring to the equation. The Commission should be visionary in the rules which it establishes, and, in the interest of regulatory parity, should base those rules on the nature of the transaction involved, not the type of carrier involved. Above all, the Commission should not adopt more stringent requirements for ILECs than for other carriers.

#### **I. SECTION 258(A) PROHIBITION**

The Commission seeks comment generally on whether its existing rules are adequate to handle all preferred carrier changes in both the local and interexchange markets, and, in particular, the local market.<sup>5</sup>

BellSouth supports the Commission's current efforts to eliminate "slamming." As competition continues to evolve in the local toll and local exchange markets, slamming could become even more pervasive unless proper rules are set forth and enforced. BellSouth believes

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<sup>5</sup> Notice, para. 11.

that it should be possible to establish one set of rules applicable to all markets. Uniform rules for authorization and verification are more cost-effective and more easily administered. Also, all entities involved, including consumers, would most likely understand the slamming rules more fully if there were only one set of rules for all marketplaces. Additionally, educating consumers and carriers alike would be simpler, less costly, and more effective with just one set of rules.

The Commission must consider, however, the changes which are occurring with the introduction of local exchange competition, and the impact which these changes will have on relationships between incumbent local exchange carriers ("ILECs"), competitive local exchange carriers ("CLECs"), interexchange and local toll<sup>6</sup> carriers and consumer end users.

An end user consumer subscriber could be the subscriber of an ILEC or CLEC as well as the subscriber of an interexchange carrier and of a local toll carrier. The relationships between these entities are fairly straightforward where the local exchange carrier ("LEC") is either an ILEC or a facilities-based CLEC. The interexchange and/or local toll preferred carrier ("PC") would submit a PC change to the ILEC or facilities-based CLEC, which has been verified, where required under the Commission's rules, with the end user subscriber, and then the ILEC or facilities-based CLEC would execute the change. Additionally, an ILEC or facilities-based CLEC offering a PC "freeze" program<sup>7</sup> would take requests from its subscriber for the implementation or discontinuance of the freeze. If the end user subscriber decides to change local exchange service providers, it would request the ILEC or the facilities-based CLEC to disconnect service and request local exchange service from a new provider. In this case, the subscriber's choices of its

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<sup>6</sup> The term "local toll" means intraLATA toll.

<sup>7</sup> A "freeze" of a subscriber's PC choice typically means that the subscriber's choice of a preferred carrier cannot be changed without the subscriber directly contacting the LEC.



PCs for interexchange and/or local toll service would not be automatically carried over. Rather, the subscriber would be required to indicate to the new LEC its PC choices (which could be the same or different from its PC choices under the prior LEC), as well as whether it wants those choices to be frozen.

These relationships, rights and responsibilities are more complicated, however, where the LEC is a CLEC which is reselling an ILEC's local exchange service. In that case, the ultimate end user would be the subscriber of the reseller CLEC's local exchange service while at the same time the reseller CLEC would be the subscriber of the ILEC's local exchange service. The Commission must clarify in these instances whether it is the reseller CLEC (as the local exchange service subscriber of the ILEC) or the reseller CLEC's end user (as the local exchange service subscriber of the reseller CLEC) which has the authority to designate and change the preferred interexchange and local toll carriers and to request implementation and discontinuance of a freeze of a preferred interexchange and/or local toll preferred carrier designation.

From the ILEC's point of view, it is the reseller CLEC which is its local exchange service subscriber. The ILEC has no service provider/subscriber relationship with the ultimate end user subscriber of the reseller CLEC. Thus, when an interexchange carrier or local toll provider comes to the ILEC with an order to change preferred carriers, that carrier would need to have properly verified under the Commission's rules, as applicable,<sup>8</sup> that the choice submitted to the ILEC is the authorized choice of the reseller CLEC. Similarly, when a freeze of interexchange carrier or local toll provider is requested, this freeze would presumably have to come to the ILEC from its local

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<sup>8</sup> Of course, such verification is today required only where out-bound marketing is involved, and BellSouth, as discussed further below, urges the Commission not to expand verification requirements to other situations, such as in-bound calls from subscribers.

exchange service subscriber, the reseller CLEC, not from the reseller CLEC's subscriber, the ultimate end user.

At the same time, presumably the reseller CLEC would not have the authority to override any choice of its end user subscriber for the latter's preferred interexchange or local toll provider or to override that end user subscriber's request for a freeze or discontinuance of a freeze of such providers. Thus, when a reseller CLEC designates a preferred interexchange and/or local toll carrier to the ILEC, authorizes an interexchange carrier or local toll provider to submit a request for a change in preferred interexchange and/or local toll carrier to the ILEC, or requests the implementation or discontinuance of a freeze of a preferred carrier to the ILEC, the ILEC should bear no responsibility for errors, as long as it executed the request as submitted to it by its subscriber (the reseller CLEC). In contrast, the reseller CLEC should be liable to its own end user subscriber if the reseller CLEC fails to follow the directions of its end user subscriber in submitting the request to the ILEC.<sup>9</sup>

The Commission should also consider the proper rights and responsibilities in the case of changes in preferred local exchange carriers. Where a subscriber wants to change from an ILEC

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<sup>9</sup> The request for an interexchange or local toll PC change by a reseller CLEC's end user subscriber could be implemented in three ways: 1) by the reseller CLEC's subscriber telling the reseller CLEC and the reseller CLEC submitting the request to the ILEC for execution of the change; 2) by the reseller CLEC's subscriber telling the preferred interexchange carrier and/or local toll provider, and the preferred interexchange carrier and/or toll provider telling the reseller CLEC and the reseller CLEC telling the ILEC; and 3) by the reseller CLEC's subscriber telling the reseller CLEC and the reseller CLEC authorizing the preferred interexchange carrier and/or local toll provider to submit the change to the ILEC for the reseller CLEC. The interexchange carrier and/or local toll provider should have to have authorization from the end user subscriber in option 2 and from the reseller CLEC in option 3. The reseller CLEC should have to have authorization from its end user subscriber in options 1 and 3. In no case could the end user reseller CLEC's subscriber submit the request directly to the ILEC because that end user is not the ILEC's subscriber.

to a facilities-based CLEC, or visa versa, the matter is straightforward: the subscriber simply requests discontinuance of the first service and installation of the second.<sup>10</sup> In this case, the subscriber must deal directly with the carrier to accomplish the change.<sup>11</sup> Where a subscriber wants to change its local exchange service from an ILEC to a reseller CLEC or from one reseller CLEC to another reseller CLEC, the new reseller CLEC can merely provide the ILEC with the appropriate order for the local service. Through BST's OSS systems, the reseller CLEC can accomplish this change of local service from the ILEC to itself or from another reseller CLEC to itself, simply by entering BST's OSS system. It would merely need to indicate through the OSS system that it is the authorized preferred local exchange carrier of the end user subscriber involved, and switch the local service from the end user to itself (in the case of a change from the ILEC to the reseller CLEC) or from the first reseller CLEC to itself (in the case of a change from one reseller CLEC to another reseller CLEC). As can be imagined, the potential for slamming of end user subscriber customers from one LEC to another is tremendous in this situation. Thus, at a minimum, the new LEC should be required to have the end user subscriber's authorization to assure that the end user subscriber has chosen it as its new local exchange service subscriber. At the same time, the ILEC which merely executes the order as directed by the other LEC should have no liability.

The Commission's proposed rules should be modified to properly reflect these relationships and responsibilities. BellSouth agrees with the Commission that the carriers

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<sup>10</sup> This would be the case at least until the availability of number portability.

<sup>11</sup> In a cellular situation, no verification should be required, for instance, where the customer brings its telephone in to the cellular carrier's location in order for the conversion to be programmed into the telephone.

involved in PC change activities can be categorized as either submitting carriers or executing carriers and that, in some instances, a carrier will be both.<sup>12</sup> It would likely be useful, however, for the Commission to further clarify when each classification is appropriate, especially in light of the multi-layered relationships described above. For instance, in the typical end user/interexchange or local toll provider/LEC arrangement (whether the LEC be an ILEC or a facilities-based LEC), the interexchange and/or local toll providers would be submitting carriers and the LEC would be an executing carrier. In the newer end user/interexchange carrier and/or local toll provider/ reseller CLEC/ILEC arrangement, the interexchange carrier and/or local toll providers would be submitting carriers (whether submitting the change to the reseller CLEC as authorized by the ultimate end user subscriber or to the ILEC as authorized by the reseller CLEC), and the reseller CLEC would be both a submitting carrier and an executing carrier: a submitting carrier when it is submitting a PC change request taken directly from its end user subscriber and given either to the ILEC or to the interexchange carrier and/or local toll provider to give to the ILEC; and an executing carrier when it is submitting to the ILEC a PC change which it has taken from an interexchange carrier or local toll provider who took the request directly from the end user subscriber. The ILEC would be an executing carrier because in all cases it would merely be executing the requests provided to it by either the interexchange carrier, the local toll provider or the reseller CLEC.<sup>13</sup>

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<sup>12</sup> Notice, para. 13.

<sup>13</sup> Of course, where the ILEC is changing the local service or local toll service (or, where authorized, the interexchange service) from another carrier to itself, it would be considered a submitting carrier.

BellSouth agrees with the Commission's tentative conclusion that only the submitting carrier, not the executing carrier, should be required to follow verification procedures.<sup>14</sup> This is because it is the submitting carrier which has the relationship with the subscriber. Requiring executing carriers to also follow these procedures would be unnecessarily burdensome and confusing for the subscriber and the executing carrier. Moreover, in many cases (as identified above for the ILEC executing a change for a requesting reseller CLEC), the executing carrier will have no relationship with the ultimate subscriber authorized to make the choice. Additionally, the executing carrier should have no responsibility for assuring that the submitting carrier followed the appropriate verification procedures.

BellSouth strenuously opposes any suggestion that more stringent requirements be placed upon ILECs than other carriers.<sup>15</sup> As BellSouth has explained above, through BST's OSS system reseller CLECs will be able to directly enter BST's ordering systems to change the local exchange service subscriber of a consumer end user, whether from BST to a reseller CLEC or from a reseller CLEC to a reseller CLEC. Interexchange and local toll providers can also submit mechanized orders to BST to change the preferred interexchange and/or local toll provider. While BST's systems will implement and discontinue freeze requests of BST's local exchange service subscribers<sup>16</sup> with regard to preferred interexchange carriers and local toll providers, a freeze of local exchange provider is not available. Any local exchange carrier indicating in BellSouth's OSS systems that it is the authorized local exchange carrier of the end user subscriber

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<sup>14</sup> Notice, para. 14.

<sup>15</sup> Notice, para. 15.

<sup>16</sup> This would be the ultimate end user subscriber where it is BST's local exchange service subscriber or the reseller CLEC where the reseller CLEC is BST's local exchange service subscriber.

can switch the local service from the existing carrier (either the ILEC or another reseller CLEC) to itself.

The Commission requests comment on whether an ILEC's practice of sending letters to former customers, once they have switched to another LEC, in an attempt to win them back would violate the Commission's verification rule prohibiting carriers from combining a Letter of Authorization ("LOA") with inducements of any kind on the same document.<sup>17</sup> BellSouth is puzzled by the Commission's apparent belief that somehow an ILEC's sending of letters to customers it has lost would be different from an interexchange carriers' or a CLEC's sending of letters to customers it has lost. In each case, the carrier knows that it has lost the customer and has a legitimate interest in contacting the customer to try to win it back. Indeed, this is a hallmark of competitive business behavior. Thus, letters to the former customer should be permissible as long as the Commission's rules are otherwise not violated. If the Commission deems it appropriate to bar the use of such letters, however, they should be barred for all carriers. There is no reason for the Commission to single out ILECs for special treatment.

The Commission asks whether or not ILECs which serve as both submitting and executing carriers should be limited to verification by an independent third-party due to the possibility that ILECs have "an enhanced ability or incentive to make unauthorized PC changes on their own behalf without detection."<sup>18</sup> Once again, BellSouth sees no rationale for treating ILECs differently from other carriers. As indicated above, with BST's OSS systems a CLEC can enter the OSS system and, as long as it indicates that it is the authorized local exchange service

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<sup>17</sup> Notice, para. 15.

<sup>18</sup> Notice, para. 15.

provider of the end user involved, can change the designated PC. This includes changing the local exchange service account from BST or reseller CLEC, as the case may be, to itself. As a result, a CLEC has just as great an ability to make PC changes as BST. Clearly, BST does not have any enhanced ability to make such changes.

The Commission requests comment on whether the “welcome package” which is presently a permitted means of verification under Section 64.1100(d) of the Commission’s rules should be eliminated.<sup>19</sup> A “welcome package” is a follow-up letter sent by a carrier to welcome an end user subscriber to its service following the end user’s verbal choice of the carrier as its PC, which letter indicates that the PC choice will be considered verified if the end user does not respond in writing retracting its verbal choice. BellSouth supports the continued availability of the “welcome package” as a verification option<sup>20</sup> and believes that the Commission’s concern is unwarranted. A “welcome package” has many positive aspects which override any potential for abuse which the Commission apparently perceives. The involved customer will have already given its affirmative consent through the telemarketing contact. The “welcome package” is the least intrusive means to verify the customer’s choice, while at the same time affording ample opportunity for a change of mind. If the Commission is concerned about the negative option aspect of the “welcome package,” however, these concerns could be addressed by requiring that the outer envelopes in which the “welcome package” is delivered to the customer clearly identify the package for what it

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<sup>19</sup> Notice, para. 18.

<sup>20</sup> BellSouth also supports the continued availability of the other verification options set forth in the Commission’s rules. However, BellSouth urges the Commission to revise Section 64.1100(b) to permit the use of electronic verification through the recording of out-bound marketing calls even though the subscriber’s ANI would not be provided, so long as other reasonable confirmation of the end user’s identity is obtained.

is, including the fact that the PC choice will be considered confirmed unless the customer returns the enclosed form within the specified number of days.<sup>21</sup>

It is for these same reasons that BellSouth opposes the Commission's tentative conclusion that verification of in-bound calls be required.<sup>22</sup> Verification requirements for consumer-initiated calls will unnecessarily subject carriers to increased costs. Additionally, BellSouth believes that the majority of slamming incidences result not from customer-initiated calls, but from other sources. However, should the Commission deem it necessary to require verification of in-bound calls, BellSouth requests that the Commission expand its options for in-bound verification to include the use of audio recording equipment. Allowing carriers the option of using audio recording equipment for in-bound verification increases the carrier's alternatives for complying with such a requirement. In addition, there would be nothing unreasonable about the use of a "welcome package" to verify subscriber choices made through in-bound calls from the subscriber to the carrier. In the case of an in-bound call, the customer itself has made the call to the service provider and typically has already decided prior to making the call that it wants the called carrier as its PC. Indeed, customers making such calls often desire the PC change to be implemented immediately. It would be unreasonably confusing and burdensome for the end user to have to take a second affirmative step (the mailing of the verification form back to the PC) to effectuate its choice.

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<sup>21</sup> The Commission could require this statement to be in large, bold type, in the same language as was used by the customer during the telemarketing contact.

<sup>22</sup> Notice, para. 19.



The Commission seeks comment on whether it should extend the current verification requirements to PC freezes.<sup>23</sup> BellSouth believes that the Commission should not. As a preliminary matter, BST does not proactively solicit PC freezes. It does not mail out or telemarket the availability of a freeze to its subscribers. BST will provide a freeze only if the subscriber requests it or, if the customer has been slammed, as an offering to soothe the subscriber's frustration and prevent future problems. With such an approach to PC freezes, verification is not needed to protect the subscriber. Moreover, BST does not permit a freeze to be implemented nor a freeze to be discontinued without having the end user subscriber<sup>24</sup> on the line at the time the request for implementation or discontinuance is made. This provides the subscriber with adequate protection.<sup>25</sup>

The Commission suggests various factors which could be used in assessing the lawfulness of freeze practices in complaint proceedings.<sup>26</sup> BellSouth sees no reason for the Commission to establish those factors as rules in this proceeding, other than to establish the principle that a freeze should not be instituted by a carrier for its own service or requested by a submitting carrier to

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<sup>23</sup> Notice, para. 21.

<sup>24</sup> This would be the reseller CLEC where the reseller CLEC is BST's local exchange service provider.

<sup>25</sup> Of course, like other issues above, the application of a freeze program must be considered in the context of the reseller CLEC. As BellSouth has discussed, the reseller CLEC should not be permitted to submit to the ILEC a request for a freeze or a discontinuance of a freeze of an interexchange or local toll provider PC without first having obtained authorization from its subscriber. On the other hand, the ILEC should be able to take the request for the implementation or discontinuance of the freeze from the reseller CLEC (as the ILEC's local exchange service subscriber) without further verification. Also as explained above, however, there is presently no freeze offered for the local exchange service provider itself, whether that provider is BellSouth or a reseller CLEC.

<sup>26</sup> Notice, para. 24.

another carrier without the permission or authorization of the subscriber to whose account the freeze applies.

One miscellaneous matter which the Commission should address is the applicability of verification requirements in the event of changes in corporate ownership or asset transfers. In particular, BellSouth requests the Commission to clarify that in the case of a sale of stock or transfer of all or substantially all of the assets of a service provider to another service provider its verification rules do not apply to the involved PC change to the resulting service provider.

## **II. SECTION 258(B) LIABILITY**

The Commission seeks comment upon what liability the subscriber which has been slammed should have for paying service charges.<sup>27</sup> BellSouth believes that the slammed subscriber should be responsible for the charges that would have been incurred had its authorized carrier(s) provided it with service during the time the subscriber was assigned to the unauthorized carrier(s). Slammed subscribers should not be relieved of all charges during the period of slamming. The risk is too great that such an approach would lead to a serious consumer fraud problem in which customers would intentionally avoid reporting being slammed for an extended period of time in order to have all their long distance and local charges written off for several months. Subscribers could even contrive a scheme to spend a significant amount of time each year in a "slammed mode" in order to avoid payment of charges. If the Commission nevertheless were to determine that subscribers should not have to pay for the service received during the time they are slammed, there should be a dollar limitation on the amount of free service and a time limitation for the free service of not more than one or two months.

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<sup>27</sup> Notice, para. 27.

The Commission seeks comment on what liability the slamming carrier should have to the authorized carrier, proposing that the former should be required to pay the latter an amount equal to all charges paid by the subscriber after the violation.<sup>28</sup> It also asks whether the offending carrier should be required to pay to the authorized carrier its costs incurred in collecting this amount. BellSouth agrees with the Commission's conclusion and believes that the additional liability for collection expenses would be appropriate. The Commission should, however, clarify that it in no way intends to impose liability on any carrier solely because it has collected amounts from the subscriber as a billing and collection agent. In addition, it should clarify that the offending carrier is not relieved of liability merely because its agent (such as a billing and collection agent) has collected the charges for it and the offending carrier has not itself "collected" the charges from the subscriber.

The Commission seeks comment on what responsibilities the authorized carrier has to the slammed subscriber.<sup>29</sup> BellSouth submits that, in order for the slamming occurrence not to provide the authorized carrier with a windfall, an authorized carrier which collects charges from the offending carrier should be required to pay to the slammed subscriber the difference in what the subscriber paid to the offending carrier and the amount of the authorized carrier's charges, if the former amount is greater.

The Commission also seeks comments on whether various products and services offered by the authorized carriers, but which the subscriber lost due to the slamming incident, should be restored to the subscriber.<sup>30</sup> BellSouth agrees with the Commission that the offending carrier

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<sup>28</sup> Notice, para. 28.

<sup>29</sup> Notice, para. 29.

<sup>30</sup> Notice, para. 30.

should be liable to the authorized carrier for the value of any such products or services and that the authorized carrier, once having received such value, should be required to restore this to the subscriber. The Commission should recognize, however, that any delay in collecting the value amount from the offending carrier could make it impracticable for the authorized carrier to restore such value to the subscriber in a meaningfully timely manner.

The Commission proposes that it should require carriers disputing PC changes under the Commission's rules to pursue private settlement negotiations as a prerequisite to the Commission's entertaining enforcement proceedings.<sup>31</sup> This would be a reasonable requirement. Rather than requiring that the parties "have undertaken" private negotiations, however, it should also be sufficient, in the case of an offending party's refusal to negotiate, for the complaining party to certify that it has in good faith conferred or attempted to confer with the offending carrier in an attempt to negotiate the dispute, but that the offending carrier has refused to do so.

The Commission proposes three rules for determining the liability of a submitting carrier and an executing carrier. In essence, the proposed rules provide that the submitting carrier will be liable any time it submits a PC change in violation of the Commission's rules, but will not be liable when it follows those rules. The executing carrier will be liable any time it fails to execute a PC change requested by a submitting carrier which followed the Commission's rules, but not where it either executed or failed to execute a PC change requested by a submitting carrier which violated the Commission's rules.<sup>32</sup> These proposals appear reasonable. However, the Commission should consider how such rules would apply in the case of the end user/interexchange carrier and/or local

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<sup>31</sup> Notice, para. 31.

<sup>32</sup> Notice, para. 34.

toll provider/reseller CLEC/ILEC arrangement. It would appear that neither the CLEC nor the ILEC should have liability if the interexchange carrier and/or local toll provider violated the Commission's verification rules; the reseller CLEC should have liability only if the interexchange carrier and/or local toll provider followed the Commission's verification rules but the reseller CLEC did not do as directed by the latter; and the ILEC should have liability only if the interexchange carrier and/or local toll provider followed the Commission's verification rules, the reseller CLEC followed the directions of the interexchange carrier and/or local toll provider, but the ILEC failed to do as directed by the reseller CLEC. For changes in local exchange providers, the new reseller CLEC, as the submitting carrier, should have liability if it has taken over the service of the end user subscriber from another LEC in violation of the Commission's verification requirements, and the ILEC, as the executing carrier, should have liability only where the reseller CLEC has not violated the Commission's rules but the ILEC failed to execute in accordance with the reseller CLEC's order.

Finally, the Commission asks whether it should establish an alternative mechanism for executing PC changes such as an independent third party to execute all requests. BellSouth submits that such a proposal is unnecessary, impractical, too costly, and would create unnecessary duplication. The LEC's switch would, in any event, have to be updated and this would necessarily involve the local exchange service provider (whether an ILEC or a facilities-based CLEC and, in the case of a reseller CLEC, the ILEC). Moreover, at least where the resale of local exchange service from an ILEC is concerned, the ILEC's OSS systems, if designed in the manner in which BST's is, will permit carriers to directly input changes into the system by the ILEC. This should provide the very neutrality for which the Commission is looking.

### **III. CONCLUSION**

In summary, the Commission's proposal for changes to its slamming rules are generally appropriate. However, the Commission should be careful to consider the impact of changes in the local exchange marketplace and, in particular, the impact of the existence of CLECs providing service through resale of an ILEC's local exchange service. The Commission should also consider the impact which the availability of an ILEC's OSS system has on the various issues presented. The Commission should be visionary in its approach, basing its rules on the nature of the transaction involved rather than the type of carrier, and, above all, should not adopt any rules which place more stringent requirements upon an ILEC than upon any other carrier.

Respectfully submitted,

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